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Court Orders Lawyer to Return Documents About an Eli Lilly Drug

By JULIE CRESWELL

A federal court in Brooklyn overseeing product liability lawsuits against Eli Lilly's best-selling drug Zyprexa has ordered the lawyer who provided company documents to The New York Times and other organizations and individuals to return the documents.

The internal Eli Lilly documents and e-mail messages detailed efforts by the drug maker to play down the health risks of Zyprexa, a medication to treat schizophrenia and bipolar disorder, as well as to encourage primary care physicians to use it in patients who did not have the disorder.

The documents, the basis for front-page articles on Sunday and Monday, were provided to a Times reporter and to organizations and individuals interested in mental health issues by James B. Gottstein. Mr. Gottstein, who is not involved in the Lilly lawsuits, is a lawyer representing mentally ill patients. He has sued the State of Alaska, accusing it of forcing patients to take psychiatric medicines against their will.

Lilly originally provided the documents, under court seal, to lawyers for plaintiffs who sued the company, contending that they developed diabetes from taking Zyprexa. Lilly agreed last year to pay \$700 million to settle about 8,000 of the claims, but thousands more are pending.

Mr. Gottstein, who was not a party to the confidentiality agreement that covers the product liability suits, subpoenaed the documents in early December from another person involved in the suits, Dr. David Egilman, an expert witness for the plaintiffs, who was also named in the federal court's order.

The order, issued yesterday by the United States District Court for the Eastern District of New York, requires Mr. Gottstein to return all of the documents provided to him by Dr. Egilman or any other source.

Mr. Gottstein was ordered to provide the court a list of people or organizations to which he gave the documents and to preserve all related voice mails and e-mail messages.

Mr. Gottstein said he was cooperating with the order and that he had asked the Times reporter, Alex Berenson, by e-mail and telephone, to return the documents.

George Freeman, a Times lawyer, declined to comment on the court order, other than to say, "Our customary practice is to retain documents which we legitimately required during our news gathering process and which are likely to be relevant to future reporting."

The order did not name The Times or any other organizations or individuals who may have received the documents nor did it require them to turn over the documents.

Mr. Gottstein said he believed that he had followed the orders established by the court in the Zyprexa lawsuit when he subpoenaed Dr. Egilman for the Lilly documents. Dr. Egilman declined to comment.

In a statement, Michael J. Harrington, Lilly's deputy general counsel, said: "Lilly is concerned that this deliberate violation of a court order and the selective disclosure of incomplete information may cause unwarranted concern among patients that could cause them to stop taking their medication without consulting their physician. We are pleased with the seriousness with which the court addressed this matter and look forward to Mr. Gottstein's swift compliance with the order."

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